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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 BODYGUARD PRODUCTIONS, INC.,

8 Plaintiff,

9 v.

10 DOE 1,

11 Defendant.

CASE NO. C17-1648 RSM

ORDER DENYING MOTION TO QUASH

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13 This matter comes before the Court on Ms. Julie Baker’s Objection and Motion to Quash  
14 a subpoena issued to an Internet Service Provider (“ISP”) for subscriber information associated  
15 with an Internet Protocol (“IP”) address. Dkt. #28. Plaintiff has responded, opposing  
16 Defendant’s Objection and Motion to Quash. Dkt. #29. Defendant has not replied to Plaintiff’s  
17 Response. For the reasons indicated below, the Court denies Defendant’s Objection and Motion  
18 to Quash.

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20 Plaintiff’s copyright infringement case alleges that Doe 1 used “peer to peer” or  
21 BitTorrent file “swapping” networks to illegally obtain and distribute the copyrighted motion  
22 picture “The Hitman’s Bodyguard.” Dkt. #1. Plaintiff identifies Doe 1 as using an IP address  
23 assigned by an ISP at a specific date and time. Dkt. #1 at ¶ 10. The Court granted Plaintiff leave  
24 to subpoena the ISP associated with that IP address to identify the subscriber assigned that IP  
25 address at the time of allegedly infringing activity. Dkt. #27.  
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1 Ms. Baker, presumably the subscriber notified by the ISP of the subpoena, requests that  
2 the Court quash Plaintiff's subpoena issued to Comcast, the ISP in this case. Dkt. #28. Ms.  
3 Baker indicates that she has "no knowledge of the alleged infringement to which [Plaintiff] is  
4 claiming [and does] not wish to allow inspection of electronically stored data." Dkt. #28.  
5 Additionally, Ms. Baker indicates:

6 Information that is stored on my devices contain material that deemed sensitive  
7 and confidential in nature and are/is protected under the Federal Rules of Civil  
8 Procedure and The Federal Privacy Act. I do not wish to be named in this  
9 proceeding. I have no knowledge of the Crime. Have a Semi secured wireless  
10 network with very limited control as to what family and guest/neighbors can  
11 download/upload. I do not own a device with a IP ADDRESS to which the above  
case number is referenced. (CASE NO. C17-1648RSM) Under the Federal Rule  
of civil Procedure C.3.iii I wish to Quash/vacate this Subpoena because of the  
electronic devices contain information is confidential and protected matter. [sic]

12 *Id.*

13 Plaintiff argues that Ms. Baker has not identified a legal basis for quashing the subpoena.  
14 Dkt. #29 at 3. Plaintiff argues that it cannot identify who may have been using the IP address  
15 assigned by Comcast at the time when the infringement occurred without first identifying the  
16 subscriber's identity, even if the ultimate liability rests with another individual. *Id.* At the same  
17 time, Plaintiff recognizes that the subscriber may not be the infringer named as Doe 1. *Id.*  
18 Because the subscriber has shared identifying information with the ISP, Plaintiff maintains that  
19 the subscriber has no privacy interest in that information. Dkt. #29 at 4. Further, Plaintiff argues  
20 that its need for the information outweighs any possible privacy interest and that it is pursuing  
21 the action in good faith to enforce its copyright. *Id.* at 5–7.

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23 The Court has broad discretion to manage discovery and to control the course of litigation  
24 under Federal Rule of Civil Procedure 16. *See Avila v. Willits Env'tl. Remediation Trust*, 633  
25 F.3d 828, 833 (9th Cir. 2011). Under Rule 45, the Court must quash or modify a subpoena that  
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1 requires disclosure of privileged or protected matter or subjects a person to undue burden. Fed.  
2 R. Civ. P. 45(d)(3)(A). Additionally, the Court has a responsibility to assure that discovery is  
3 proportional to the needs of the case. Fed. R. Civ. P. 26.

4 The Court finds no basis to quash this subpoena as Ms. Baker has failed to show that the  
5 subpoena at issue requires disclosure of privileged or otherwise protected information or subjects  
6 her to an undue burden. Ms. Baker has standing to seek an order quashing the subpoena to a  
7 third party as, assuming she is the subscriber, she likely has some interest in the information  
8 sought. *See Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965, 973–74 (C.D. Cal. 2010)  
9 (recognizing standing to quash a subpoena issued to a third party where the moving party has “a  
10 personal right or privilege with regard to the documents sought”). However, Ms. Baker has not  
11 demonstrated that the information is privileged or otherwise protected. Ms. Baker also does not  
12 establish the burden that will be placed on Comcast in responding to the subpoena or establish  
13 that the subpoena will place an undue burden on her.<sup>1</sup>

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15 The Court also does not find a basis to limit this discovery under Federal Rule of Civil  
16 Procedure 26. Rule 45 subpoenas are still subject to the limitations of Rule 26. *See Nidec Corp.*  
17 *v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007). Pursuant to Rule 26, the Court  
18 may limit discovery where “the discovery sought is unreasonably cumulative or duplicative, or  
19 can be obtained from some other source that is more convenient, less burdensome, or less  
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22 <sup>1</sup> The Court notes that most of Ms. Baker’s concerns are not implicated by the current subpoena.  
23 Ms. Baker indicates that she is not liable, does “not wish to allow inspection of electronically  
24 stored data,” and is concerned that her “electronic devices contain information [that] is  
25 confidential and protected matter.” Dkt. #28 at 1. Issuance of the subpoena does not establish  
26 that Ms. Baker, even if the subscriber, is liable for the infringing activity that Plaintiff alleges.  
Further, Plaintiff’s subpoena to Comcast only seeks documents from Comcast “sufficient to  
identify the name, address, and email address of the subscribers associated with the IP addresses  
and at the capture times indicated in attached Exhibit A.” Dkt. #28 at 2. To the extent Plaintiff  
seeks to examine the contents of Ms. Baker’s personal electronic devices in the future, Ms. Baker  
may raise her concerns at that time.

1 expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i). Here, Plaintiff has established that the requested  
2 information cannot be obtained from some other source that is more convenient, less  
3 burdensome, or less expensive.

4 Accordingly, having reviewed the relevant briefing and the remainder of the record, the  
5 Court hereby finds and ORDERS that Ms. Baker’s Objection and Motion to Quash (Dkt. #28) is  
6 DENIED.

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8 DATED this 25th day of May 2018.

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11 RICARDO S. MARTINEZ  
12 CHIEF UNITED STATES DISTRICT JUDGE  
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